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Refugee Reports

A News Service of the U.S. Committee for Refugees
1025 Vermont Avenue NW, Suite 920 Washington, DC 20005 (202) 347-3507

Volume X, Number 11 November 17, 1989

FY 90 REFUGEE BUDGETS CLEAR CONGRESS, AWAIT PRESIDENTIAL SIGNATURE

Nearly eight weeks into a new fiscal year, two spending bills that include $790 million for the U.S. refugee program have been cleared by Congress and await signature by President Bush to be enacted into law. Both bills survived vetoes and veto threats, thus avoiding the need for another short-term "continuing resolution" to fund refugee programs at home and abroad.

A $368.8 million appropriation for the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services is included in the Labor/HHS/Education Appropriations Bill, which was cleared by Congress on October 19 but vetoed by President Bush two days later, because it contained an amendment providing federal funds for abortions in cases involving rape and incest. Congress later agreed to drop the amendment, and the bill (H.R. 3566) is expected to be enacted shortly.

Similarly, Congress agreed to remove an abortion-related amendment in the Foreign Operations Appropriations Bill (H.R. 2939), which appropriates $370 million for the Department of State's migration and refugee assistance programs, to cover processing and admissions costs as well as relief and assistance programs overseas. The bill provides an additional $50 million to the State Department for emergency refugee migration and assistance programs.

Refugee language in the foreign aid measure includes eight separate Congressional earmarks, most of them relating to overseas assistance programs. The bill also includes an amendment that would establish certain groups of Soviet and Indochinese refugee applicants as belonging to categories of people "who share common characteristics that identify them as targets of persecution."

The State Department has opposed all of the earmarks on the grounds that they restrict the government's capacity to meet new and unexpected needs that arise during the year. The Department has also objected to the establishment of "category groups" for refugees.

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ORR Has Less Money for Cash and Medical Assistance, More for Other Services The Administration's initial budget request, submitted in January, was for $242.3 million, based on an estimate of 84,000 refugee admissions. In October, President Bush authorized admissions of 125,000 refugees. Congressional conferees, in a report accompanying the Labor/HHS/Education spending bill, said the budget request "falls well below the amount required to maintain current services," and added $126.5 million.

The final appropriation, however, provides $13.5 million less than was available for ORR resettlement programs in FY 89, despite the fact that the admissions ceiling has increased from 116,500 to 125,000.

The largest cut was made in the budget line-item for refugee cash and medical assistance, which dropped from $261.8 million in FY 89 to $210 million in FY 90 (see chart on page 3). The conferees said that they "intend that the period of reimbursement for cash and medical assistance not fall below 12 months." In fact, ORR officials say that the period of federal reimbursement to states would fall to somewhere between 4 and 7 months.

"This continues a trend of shifting the burden of refugee resettlement from the federal government onto the states," said Bruce Bushart, New York state refugee coordinator. "Such a substantial shift as this begins to erode support for the refugee program."

Funding for many other ORR programs actually was increased over last year's levels. The social services budget was upped by $9 million and targeted assistance by $4 million, but the most dramatic jump was seen in the voluntary agency matching grant program budget, which went from $15.8 million in FY 89 to $40 million in FY 90.

Under the matching grant program, ORR provides up to $957 per refugee to match, on a dollar-for-dollar basis, private contributions made by resettlement agencies. The goal of the program is to help refugees attain self-sufficiency, without access to public cash assistance, within four months after arrival.

Although the matching grant program is not restricted to any refugee ethnic group, more than 70 percent of the annual caseload comprises Soviet Jews. Because the U.S. approved admissions of an additional 25,000 Soviet refugees in mid-FY 89, without providing additional funding for domestic programs, ORR could provide only about $260 per refugee in matching money last year.

The Council of Jewish Federations (CJF), which is responsible for the U.S. resettlement of Soviet Jews, estimates that the agency incurred about $18 million in unreimbursed matching grant expenses in FY 89.

Of the $40 million appropriated for FY 90 matching grant costs, a CJF official said that $3 million will be available retroactively to cover FY 89 voluntary agency expenditures. The rest will be used in large part to resettle an estimated 30,000 Soviet Jewish refugees this year.

CJF hopes to recoup the remaining $15 million of FY 89 expenses through an earmark on the State Department's migration and refugee assistance account, transferring that amount to ORR.

Congressional Earmarks Mean Less Money for Refugees Overseas, State Department Says A senior State Department official, in testimony before the House Foreign Affairs Committee on November 17, said that the net effect of the Congressional earmarks, coupled with the already limited funding levels for overseas assistance in FY 90, will be to reduce the U.S. contribution to the UN High Commissioner for Refugees (UNHCR) budget from around 25 percent of the worldwide total to about 16 percent.

U.S. contributions to UNHCR totalled $109.6 million in 1989. The reduced amounts for 1990 programs, according to one international refugee official, "will have a definite impact on the levels of contributions from other countries and on levels of assistance in refugee camps."

"We felt that the transfer was the least bad of two lousy alternatives," said Ellen Witman, associate director of CJF's Washington Action Office, who had lobbied Congress for the $15 million shift. "If we didn't fight for the transfer," she told Refugee Reports, "our programs would be forced to eat $15 million" owed by the federal government for FY 89 matching grant costs.

Witman said that a number of Administration officials and members of Congress had publicly stated the need for a State Department supplemental appropriations later in the year, at which point the refugee money could be restored. "An ORR supplemental, however, is very unlikely," Witman

said. "We are hoping for an early spring supplemental" to restore the State Department funds, she added, "and will work very hard to see that happen."

Regardless of the prospects for a budget supplemental, "it sets a dangerous precedent to earmark foreign aid money for domestic programs," said Dawn Calabia, associate director for refugees for the United States Catholic Conference, Migration and Refugee Services. "Domestic constituencies will always be more powerful than overseas constituencies. This puts us on a slippery slope. What other domestic needs will be met next year with overseas refugee aid money?"

Other Congressional earmarks on the foreign aid bill include a $10 million earmark for aid to ethnic Turkish refugees fleeing Bulgaria; $25 million for resettlement of Soviet Jews and other refugees in Israel; and a $250,000 earmark for humanitarian assistance to displaced Burmese students on both sides of the Thai-Burmese border.

"Category Groups" The State Department bill also includes an amendment that modifies legislative proposals made by Rep. Bruce Morrison (D-Conn.) and Sen. Frank Lautenburg (D-NJ), to establish categories of people from the Soviet Union and Indochina "who share common characteristics that identify them as targets of persecution."

The amendment parallels the Morrison and Lautenburg proposals in establishing as category groups for the remainder of FY 90, Soviet Jews and Evangelical Christians, members of the Ukranian Catholic or Orthodox Church, and Indochinese previously identified as such by the INS "Worldwide Guidelines for Overseas Refugee Processing" issued in August 1983. These include Chinese, and Buddhist monks in Vietnam and Cambodia, Vietnamese Catholics, Hmong in Laos, and pre-1975 government and military officials in all three countries.

The amendment also allows all Soviet, Vietnamese, Laotian, and Cambodian nationals who were denied refugee status and instead entered the United States as parolees between August 15, 1988 and September 30, 1990 to adjust to permanent resident status.

State Department Authorization Bill
Although Congress did not reauthorize the Refugee Act of 1980, it did reauthorize refugee funding for the Department of State, which awaits a Presidential signature.

The State Department authorization bill (H.R. 1487) includes language requiring the Secretary of State to submit a report to Congress on U.S. immigration and refugee policy as it relates to Burmese refugees on the Thai-Burmese border. Congress also condemned Bulgaria's mistreatment of its Turkish minority and called for an end to discriminatory practices and for free emigration of ethnic Turks.

The conference report accompanying the bill includes an expression of concern "that Malaysian authorities have recently engaged in a pattern of 'push-offs' of Vietnamese seeking asylum on the east coast of Malaysia, with more than 2,000 persons being denied first asylum in Malaysia since May 1989." According to UNHCR reports, at least four have died.

FY 90 APPROPRIATIONS FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (H.R. 3566)

REFUGEE AND ENTRANT ASSISTANCE

	FY 89 Appropriation	FY 90 Request	FY 90 Appropriation
Cash/Medical Assistance and State Admin.	261,820,000	201,659,000	210,000,000
Social Services	64,906,000	30,000,000	75,000,000
Voluntary Agency (Matching Grant) Programs	15,808,000	7,659,000	40,000,000
Preventive Health	5,770,000	3,000,000	5,770,000
Targeted Assistance	34,052,000	0	38,052,000
TOTAL	382,356,000	242,318,000	368,822,000

FY 90 FOREIGN OPERATIONS APPROPRIATIONS FOR THE DEPARTMENT OF STATE (H.R. 2939)

MIGRATION AND REFUGEE ASSISTANCE

	FY 89 Appropriation	FY 90 Request	FY 90 Appropriation
Refugee Admissions	140,000,000	156,500,000	
Refugee Assistance			
East Asia	26,000,000	25,500,000	
Africa	54,530,000	58,200,000	
Near East	81,800,000	80,300,000	
Latin America	11,020,000	11,200,000	
Subtotal	173,350,000	175,200,000	
Refugees to Israel	28,000,000	20,000,000	
International Organizations	12,600,000	10,300,000	
Administration	8,000,000	8,000,000	
TOTAL	361,950,000	370,000,000	370,000,000*

EMERGENCY REFUGEE AND MIGRATION ASSISTANCE

FY 89 Appropriation	FY 90 Request	FY 90 Appropriation
50,000,000	10,000,000	50,000,000

* While the Foreign Operations appropriations bill includes no line item allocations, it does include 8 separate earmarks and an amendment establishing "category groups" for Soviet and Indochinese refugee applicants.

Earmarks:

$15,000,000	To be transferred from the State Department's Migration and Refugee Assistance account to the Office of Refugee Resettlement for the voluntary agency matching grant program. This money would reimburse voluntary resettlement agencies for matching grant costs incurred in FY 89.
$46,000,000	For admission of Indochinese refugees in first asylum countries. A Senate earmark on the $156,500,000 available for refugee admissions worldwide was dropped in conference. Conferees also deleted a $15,000,000 earmark for admission of Amerasians and their family members from Vietnam, but noted that about $40,000,000 would be needed for Amerasian resettlement in FY 90.
$1,500,000	For refugee protection programs on the Thai-Cambodian border.
$1,500,000	For the anti-piracy program in Southeast Asia.
$25,000,000	For the resettlement of Soviet, Eastern European, and other refugees in Israel.
$10,000,000	For "assistance for shelter, food and other basic needs to ethnic Turkish refugees fleeing Bulgaria." Conferees deleted a Senate earmark of $5,000,000 to assist Iraqi Kurdish refugees in Turkey but said "it would be a tragedy not to give immediate and direct assistance" to the 36,000 Iraqi Kurds living in southeastern Turkey.
$8,250,000	As a cap for administrative expenses of the Bureau for Refugee Programs.
$250,000	For "food, medicine, medical supplies, medical training, clothing, and other humanitarian assistance for displaced Burmese students at camps on the border with Thailand."

"Category Group" Amendment

The Foreign Operations appropriations bill also includes an amendment that would require the Attorney General, in consultation with the Secretary of State and the Coordinator for Refugee Affairs, to establish categories of people from the Soviet Union, Vietnam, Laos, and Cambodia "who share common characteristics that identify them as targets of persecution." The amendment, a modified version of proposals offered previously by Rep. Bruce A. Morrison (D-Conn.) and Sen. Frank Lautenberg (D-NJ), would:

o Establish as category groups, for the remainder of FY 90, Jews and Evangelical Christians from the Soviet Union as well as Indochinese previously identified as such by the Attorney General in the August 1983 "Worldwide Guidelines for Overseas Refugee Processing" issued by the Immigration and Naturalization Service.

o Establish current, active members of the Ukranian Catholic Church or the Ukranian Orthodox Church as a category group and allocate 1,000 FY 90 admissions numbers for their resettlement.

o Establish that a member of a category group "has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion by asserting such a fear and asserting a credible basis for concern about the possibility of such persecution."

o Require that "each decision to deny an application for refugee status of an alien who is within a category established under this section shall be in writing and shall state, to the maximum extent feasible, the reason for the denial." This would apply only to decisions made after enactment of the act and before October 1, 1990.

o Permit any member of a category group who was denied refugee status after August 14, 1988 and before enactment of the law to reapply for such status.

o Require the General Accounting Office to submit a report to Congress by March 31, 1991 on refugee processing in Moscow and in Italy, including "an evaluation of efforts to phase out Soviet refugee processing in Italy."

o Require the Attorney General to adjust to permanent resident status anyone from the Soviet Union, Vietnam, Laos, or Cambodia who was granted parole into the United States during the period August 15, 1988 to September 30, 1990, after having been denied refugee status.

The Morrison bill would have established a member of a category group as "subject to persecution without the need to provide independent or additional evidence regarding persecution." This amendment, closer to language proposed by Lautenberg, requires a member of a category group to establish a well-founded fear of persecution "by asserting such a fear and asserting a credible basis for concern about the possibility of such persecution." In report language accompanying the bill, House and Senate conferees stated that they "intend that a 'credible basis for concern' is established if the applicant asserts: (1) acts of mistreatment, or prejudicial action against the individual personally such as, but not limited to, (a) inability to study or practice religious beliefs or ethnic heritage; (b) denial of access to educational, vocational or technical institutions for which he or she is otherwise qualified, based on the individual's membership in the group; (c) adverse treatment in the workplace stemming from prejudicial attitudes towards members of his or her group; or (2) acts of persecution committed against similarly situated individuals, in his or her geographic locale; or (3) instances of mistreatment or prejudicial actions based on the individual's request to depart the individual's homeland, including, but not limited to, loss of home, job or education opportunity; (4) knowledge, either from having read of or heard of, of situations like those in (a), (b), and (c) as affecting persons in the same category residing elsewhere in the home country.

"Once a credible basis for concern about the possibility of persecution has been established, the burden of disproving eligibility for refugee status will fall upon the United States government."

Update

In light of the rapidity of changes in Eastern Europe, particularly since the opening of the border between East and West Germany, and the extensive coverage of these developments in the press, this issue of Refugee Reports will not attempt to catalogue all such changes. Suffice it to say, that in addition to the removal of emigration barriers for East Germans, Czechoslovakia dropped the requirement for exit visas before leaving the country on November 14, and the Soviet Parliament on November 13 approved the first reading of a bill to ease emigration restrictions, though it would still reportedly bar emigration for up to five years for Soviet citizens with access to state secrets.

° UN High Commissioner for Refugees Jean-Pierre Hocke resigned his post effective November 1, amidst charges of mismanagement and misuse of funds.

Both the U.S. State Department and the UN had been critical of Hocke. According to the October 27 Washington Post, an August State Department report said that continuation of Hocke's policies would "further pollute the air of negativism which already swirls around UNHCR." A UN panel set up to investigate charges of favoritism and poor hiring practices by Hocke concluded that the prevailing situation could prevent UNHCR "from effectively carrying out its mandate," and might "damage the UN as a whole."

Gerald Hinteregger was appointed to head UNHCR until a new High Commissioner is named. The present front-runner for the post is Thorvald Stoltenberg, Norway's former foreign minister, who is favored by the Nordic countries. USCR director Roger Winter appealed to the international community to support UNHCR. "At this critical point, when the institution of UNHCR is at a low ebb," Winter said, "it is important that statesmen, not politicians, rally around UNHCR to protect its mandate, its future, and the lives of refugees the world over."

° A group of 1,127 Salvadoran refugees who had been living in Mesa Grande camp in Honduras returned to their homeland at the end of October. According to the Washington office of the UN High Commissioner for Refugees (UNHCR), 33 buses and 148 trucks transported the returnees and their belongings to three main sites in El Salvador. The convoys were accompanied by UNHCR staff from Honduras, El Salvador, and Costa Rica and by 19 members of the U.S. Going Home National Interfaith Campaign.

The repatriation was marred by disputes over whether the refugees would be allowed to return to their areas of origin, and delays in the registration process, which took place at the refugee camps at the insistence of the Salvadoran government.

A total of 12,073 Salvadorans remain in refugee camps in Honduras (Colomoncagua, 8,362; Mesa Grande, 2,584; San Antonio, 1,127). Some 8,000-10,000 of those who remain have indicated that they also plan to repatriate.

° Princeton Nathan Lyman has been named the new director of the U.S. State Department's Bureau for Refugee Programs. Lyman was selected by Secretary of State James Baker III to replace Ambassador Jonathan Moore.

Lyman has spent much of his professional life working in the State Department. He has been deputy assistant secretary of state for African affairs, and, most recently, served as U.S. Ambassador to Nigeria.

° Secretary of Health and Human Services Louis Sullivan has appointed Chris Gersten as director designate of the Office of Refugee Resettlement (ORR). Gersten held his first meeting with state refugee coordinators at ORR's annual meeting in November. He told them he hoped to push hard for early self-sufficiency for refugees. "We push early employment not because of our legal mandate," Gersten said, "but because early employment is the best thing for refugees and for the community as a whole."

Prior to his appointment, Gersten was executive director of the National Jewish Coalition. He has also worked with the Freedom Federation, where he founded and chaired a coalition of Eastern Europeans, Balts, Southeast Asians, and Cubans.

° Gene McNary was confirmed by the U.S. Senate on October 24 as the new Commissioner of the Immigration and Naturalization Service (INS). McNary promised to bring order and more centralized authority to the INS. Recently, outgoing INS General Counsel Raymond M. Momboisse wrote a 22-page memo calling the agency "totally decentralized" and "totally disorganized."

The Momboisse memo compared the INS to a feudal state "with each region, district, and sector acting independently to give its own interpretation to the law." Momboisse criticized the agency for poor record keeping, overhiring, sloppy enforcement procedures, and "incompetency at all levels of command."

The memo was first made public by Sen. Dennis DeConcini (D-Ariz.) at the McNary confirmation hearing on October 3 and subsequently leaked to the press.

Earlier, Attorney General Dick Thornburgh had ordered an audit of the agency that revealed far-ranging mismanagement, millions of dollars of unnecessary costs, extensive adjudication backlogs, and inconsistent policy implementation (see Refugee Reports, Vol. X, No. 4).

° U.S. District Judge David V. Kenyon has once again found the INS to be in violation of his injunction in the Orantes-Hernandez class-action suit requiring it to inform Salvadorans in INS detention of their right to apply for asylum and to provide Salvadorans with access to attorneys, lists of free legal services, legal rights materials, pencils and paper, and telephones. (See Refugee Reports, Vol. X, No. 5 and Vol. IX, No. 5.)

On September 28, Kenyon found the INS in contempt of his earlier injunction requiring it to provide at least one telephone per 25 detainees. He cited "clear and convincing evidence that defendants have not complied with injunctive requirements regarding access to telephones."

On other matters, such as advising detainees of their rights, access to writing and legal materials, and providing lists of free legal services, Kenyon said that INS action does not rise to the level of contempt, but that "the Court is greatly concerned by the documented instances of non-compliance and believes that remedial measures are appropriate to ensure future compliance."

Among other things, Kenyon ordered the INS to continue group legal rights presentations; to train INS and contract employees at the Port Isabel Service Processing Center in the requirements of the Orantes injunction; to require that attorneys and paralegals have access to clients within 15 minutes of presenting their names to the authorities; and to make legal rights materials freely available.

° On November 6, U.S. District Judge William P. Gray ruled that immigration judges violate the constitutional rights of non-English speaking aliens in immigration proceedings by failing to translate the entire proceedings into the aliens' language.

The class-action suit, El Rescate Legal Services, Inc., et. al. v. Executive Office of Immigration Review (EOIR), was brought on behalf of all non-English and limited-English-speaking individuals who are or will be subject to immigration court proceedings in the Los Angeles and San Diego INS districts.

Gray ordered that when interpreters are required, "the entire proceedings shall be interpreted." Immigration courts generally interpret only direct questions to the aliens. If, for example, a Border Patrol agent is called to testify, such testimony has generally not been translated.

Judge Gray said he was "troubled by the lack of concern for the interests" of persons undergoing deportation proceedings by the government. Gray added that he was "appalled" by Chief Immigration Judge William Robie's testimony that court interpreters serve only for the creation of an official court record.

Niels W. Frenzen, an attorney with Public Council, who was one of the attorneys for the plaintiffs, said that the action was based on the Fifth Amendment guarantee of due process, as well as the statutory rights in the Immigration and Nationality Act to be present, cross examine witnesses, and to present evidence.

Although this is a national policy and the rights being abridged are also national in scope, the order is limited to immigration courts in San Diego, El Centro, and Los Angeles.

The government has 60 days to appeal the

decision.

° The INS issued a cable to its field offices on October 12 reaffirming that INS officers should, on a case-by-case basis, "view sympathetically" Lebanese nationals' requests for deferred departure "where such requests are based upon compelling humanitarian need."

The cable said, "This is a lesser standard than a fear of persecution." The INS has declined, however, to make a blanket extended voluntary departure (EVD) ruling on behalf of Lebanese.

Legislative measures to delay the deportation of Lebanese have been introduced by Rep. Mary Rose Oakar (D-Ohio)--H.R. 3267--and by Rep. Dan Glickman (D-Kan.)--H.R. 3239--(see Refugee Reports, Vol. X, No. 10).

° Ambassador Princeton Lyman, director of the State Department's Bureau for Refugee Programs, predicted that asylum approval rates for Eastern European applicants will decline in the coming year due to improved human rights conditions in that region.

In testimony on November 3 before the House immigration and refugee subcommittee, Lyman said, "As the pace of liberalization has accelerated over the past year, many of the conditions that led to this rate of eligibility [about 50 percent in FY 89] for refugee status have been removed."

Acting INS Chief of Staff Gerald Coyle told the same subcommittee that Western Europe should take primary responsibility for East European asylum seekers. "The U.S. refugee resettlement program cannot serve as a substitute for another country's first asylum responsibilities," he said.

Lyman suggested that the United States should encourage East Europeans to stay at home and work for change in their own countries.

Rep. Bruce A. Morrison (D-Conn.), chairman of the subcommittee, commented that the regional ceiling for FY 90 of 6,500 refugee admissions was likely to be insufficient to meet the demand.

He noted that some 25,000 East Europeans in Western Europe are awaiting INS interviews, but that those interviews have been suspended for lack of available refugee admissions slots.

Recent Developments

TEMPORARY SAFE HAVEN BILL PASSES HOUSE, ADVANCES IN SENATE

A bill that would provide temporary safe haven for Nicaraguans, Salvadorans, and Chinese nationals in the United States passed the House of Representatives by a 258-162 vote on October 25. A measure limited to Salvadorans and Nicaraguans also was reported favorably out of the Senate Judiciary Committee on November 2 by a 11-3 vote.

Rep. Bruce A. Morrison (D-Conn.), chairman of the House Subcommittee on Immigration, Refugees, and International Law, and one of the chief architects of the House bill, spoke of the bill as a "marriage" of three separate legislative initiatives. First was Rep. Joe Moakley's (D-Mass.) original bill to establish temporary safe haven for Nicaraguans and Salvadorans (see Refugee Reports, Vol. IV, No. 10; Vol. VI, No. 8; Vol. VII, No. 8; Vol VIII, No. 8; Vol. X, No. 10). Added to this was Morrison's modification of President Bush's order providing protected status to Chinese nationals (see Refugee Reports, Vol. X, No. 7). Members of Congress had criticized the Administration's actions for lacking a clear statutory basis and for only providing a single year of protection.

The final part of the "marriage" was a legislative initiative started last year by Rep. Romano Mazzoli (D-Ky.) for a "generic" legislative framework to provide criteria to allow persons whose countries are in turmoil to remain in the United States temporarily (see Refugee Reports, Vol. VIII, No. 11; Vol. IX, No. 10; Vol. X, No. 6).

As now drafted in the House, Morrison said H.R. 45 "will create a category of immigration law where there has been a gap, where there has only been administrative discretion."

The amended Moakley bill picked up another 21 votes this year from when it passed last year before Chinese nationals and the generic safe haven language had been added. Mazzoli himself, who, as the former chairman of the House refugee subcommittee,

had been the most prominent Democrat to oppose the bill last year, now voted in favor (see Refugee Reports, Vol. X, No. 2).

H.R. 45 also gained the support of high profile conservatives, such as Henry J. Hyde (R-Ill.), who circulated a "Dear Colleague" letter shortly before the vote saying, "More than a decade of Marxist Sandinista oppression has left more than 150,000 Nicaraguans in the United States in uncertain legal status. Please join with me in supporting this measure so that we can provide this short-term protection to the families of these brave freedom fighters."

Another new supporter of the bill, Rep. Hamilton Fish (R-N.Y.), a prominent minority member of the House refugee subcommittee, had been a key leader in the floor flight against the bill in the last session of Congress.

This time around, however, Fish said, "Humanitarian considerations require us to offer temporary refuge to people already in our country who cannot return home safely. The threat to human life posed by war or natural disaster can be as great--or even greater--than the risk to life posed by the threat of persecution."

Fish said that a strength of the revised bill is its requirement that aliens register for its protection, so they would be identifiable. At present, he said, we do not know the identities of hundreds of thousands of people. After their temporary status terminates, he said, registered people would be more likely to return home when conditions in the home country improve. "In the meantime," Fish said, "it is in our national interest to have Salvadorans and Nicaraguans living in the open rather than maintaining an underground existence."

A number of other Republicans continued to express opposition to the measure. Rep. Bill McCollum (R-Fla.), also active on the House refugee subcommittee, expressed his opposition to the bill "somewhat reluctantly" because, he said, "I understand the concerns that many have with the affected nationals." But, he said, the singling out of certain nationalities because of civil strife "ignores other countries and people who may qualify for assistance for the same reasons."

"Most of the Middle East, South Africa, and several other African countries, most of Central America, much of Southeast Asia, and many in South America might qualify if we applied the same kind of liberal standard," McCollum said.

"What happens if the Mexican economy slides and civil strife occurs?" he asked. "What happens then?"

Senate Judiciary Marks Up DeConcini Bill

After weeks of delay, the Senate Judiciary Committee on November 2 finally considered six amendments from Sen. Alan K. Simpson (R-Wyo.) to DeConcini's temporary safe haven bill for Nicaraguans and Salvadorans and reported the amended bill to the full Senate.

The Judiciary Committee defeated by a 10-4 vote an amendment that would have directed the Attorney General to create "standard profiles" of groups within El Salvador and Nicaragua who might be subject to adverse treatment, so that, on a case-by-case basis the Attorney General would be able to grant a single year of extended voluntary departure (EVD) to persons matching those profiles. Sen. Dennis DeConcini, the bill's author, said that the amendment would "do away with the purpose of the bill," which, he said, is to protect individuals "subject to random violence." He said that the Attorney General could and should do standard profiles, but that such action did not require legislation.

DeConcini accepted other Simpson amendments that would require a registration fee and that would reduce from 180 to 90 days the period after enactment for nationals of El Salvador and Nicaragua to register for the bill's protection.

DeConcini also accepted a Simpson amendment that would prohibit EVD to aliens who return voluntarily to their home countries after January 1, 1989, but added language that would allow the Attorney General to grant "advanced parole" to returning aliens in certain cases. DeConcini mentioned deaths, emergencies, and the upcoming elections in Nicaragua as possible reasons for granting advance parole.

The Judiciary Committee rejected by a 10-4 vote an amendment that would have prevented future consideration of bills to adjust to permanent resident the status of these protected nationalities. The Committee also rejected by a 10-4 vote an amendment for the federal government to reimburse state and local governments for 100 percent of the costs incurred as a

result of this bill.

DeConcini and Moakley Bills No Longer "Companion" Pieces of Legislation The DeConcini and Moakley bills now differ in several important respects. The most obvious difference, of course, is that the House bill, H.R. 45, includes a third nationality--Chinese--as beneficiaries.

H.R. 45 also lays out the criteria for "temporary protected status" (TPS) as a statutorily distinct category. The Attorney General is authorized to designate temporary protected status due to 1) ongoing armed conflict; 2) earthquakes, floods, droughts, epidemics, or other environmental disasters where the affected country is temporarily unable to handle the return of aliens and the government requests a grant of TPS; or 3) other "extraordinary and temporary conditions" that prevent aliens from returning.

Moakley's bill would also give those eligible for protection nine months to register, as opposed to three months under the DeConcini bill.

The House bill has a U.S. residency cut-off date of July 1, 1989; the Senate cut-off date is January 1, 1989.

H.R. 45 suspends deportation for three years. Under S. 458, deportation is suspended while the General Accounting Office studies the safety of return to Nicaragua and El Salvador and while Congress considers the report and makes recommendations based on it. That period of time would be roughly two years.

The amended DeConcini bill, S. 458, now proceeds to the Senate floor. Having passed the House, H.R. 45 will now be considered separately by the Senate Subcommittee on Immigration and Refugee Affairs.

UNHCR FUNDING CRISIS DEEPENS

For several months, the Office of the UN High Commissioner for Refugees (UNHCR) has faced a major funding crisis (see Refugee Reports, Vol. X, No. 7). UNHCR has already cut services to refugees, asserting that these cuts have been in important but non-life-threatening areas, such as education, legal aid, and programs to promote self-sufficiency. But ominous signs point to cuts in essential areas such as medical services and nutritional programs.

In Malawi, according to UNHCR, "Plans to replace highly inadequate medical facilities...have had to be cancelled...[and] nutritional standards are likely to decline as a result." In fact, according to a report by the World Council of Churches, nutritional surveys among the refugee population in Malawi have shown that the level of malnutrition has already risen from 5 percent in 1988, to 10-15 percent in 1989. The report adds that malnutrition rates have also gone up in refugee camps in Sudan and Somalia. If additional funds are not forthcoming, UNHCR says, the organization "may not even cover survival needs."

As a result of the cuts, projects to help refugees become self-sufficient, education and mental health programs, and projects for refugees with special needs, such as women and the elderly, have been cancelled.

UNHCR is almost entirely dependent on contributions from UN member nations for its operations. Although financial support from the leading donor governments, including the United States, increased 16 percent between 1986 and 1988, it has not kept up with the rising cost of caring for existing refugees, responding to new emergencies, and assisting refugees to repatriate. Those costs rose 41 percent during the same period.

Feature

ASYLUM APPEAL CASES RAISE HOPE FOR MORE POSITIVE DECISIONS

While continuing to take a narrow approach toward asylum seekers from Central America, the Board of Immigration Appeals (BIA), the highest administrative level of asylum appeal, has recently granted asylum in cases involving applicants from nationalities outside the Western Hemisphere. These cases become precedents that may, in the future, be more universally followed.

The recent asylum decisions involve applicants who can document past persecution, but not necessarily a future threat; who have lived in third countries before entering the United States; and who have fled as a result of persecution or fear of persecution based on political neutrality in civil conflict.

BIA Grants Asylum Based on Past Persecution without Fear of Future Persecution In an April 25 decision that predated the June massacre at Tiananmen Square, the BIA determined that a Chinese national could be granted asylum based on past persecution, even in the absence of evidence of a well-founded fear of future persecution.

In Matter of Chen, the BIA noted that the law defines a refugee as a person unwilling or unable to return to his country because of "persecution or a well-founded fear of persecution." The plain language of the statute, said the BIA, indicates that past persecution can be the basis for the persecution claim.

Chen, the son of a Christian minister, testified that he and his family were persecuted in China during the Cultural Revolution of the 1960s and 70s. During that time, his father was arrested, paraded through the streets on more than 50 occasions, forced to write "confessions" of his crimes, and at one point pushed into a bonfire of Bibles, where he was severely burned. When he was eight years old, the Red Guards locked Chen in a room for six months, where he was deprived of food and mistreated. Chen stated that he is physically disabled due to abuses he suffered, that he must wear a hearing aid, is anxious and fearful, and often suicidal. He testified that he would kill himself if forced to return to China.

The State Department's advisory opinion stated that Chen did not have a well-founded fear of persecution.

In 1984, an immigration judge found that the "leniency of the present Government of China to mere religious activity does not permit a finding of a well-founded fear" of persecution in the future.

The BIA sustained Chen's appeal in 1988 and granted asylum, but the Immigration and Naturalization Service (INS) moved for reconsideration.

Taking a second look at the case, the BIA agreed with the immigration judge that Chen had not met the burden of establishing a well-founded fear of persecution. "While religious freedom as we understand it may still not be enjoyed in China, we are not persuaded that a reasonable person in the respondent's circumstances would have a well-founded fear of persecution on account of his religion, if returned to the China of 1989."

But the BIA nevertheless found Chen statutorily eligible for asylum based solely on his past persecution, and concluded that he should be granted asylum. "Given what happened to his father, and given the manner in which he spent much of his boyhood, his fear of repatriation is understandable."

In a separate concurring opinion, Board member Michael J. Heilman took the State Department to task for writing an advisory opinion stating that Chen did not have a well-founded fear of persecution. He said that information in the State Department's Bureau for Human Rights and Humanitarian Affairs "Country Reports" show that prior to 1981 religious worship was forbidden and that almost all places of worship were confiscated and turned into factories or government or military facilities and that at present persons who practice any religion are discriminated against. He cited information from the BHRHA country reports on arrests of clergy since 1981 and on other repressive measures taken against religious activities. Heilman said, "I for one will express serious doubts as to the extent of religious freedom in China at present, and no great confidence that the very recent past will not be repeated."

Heilman also criticized the INS, saying that he would not have granted its motion to reconsider.

The INS had stated that it could not "believe that Congress intended that past persecution could be the basis" for an asylum grant. Heilman said, "There was no reference to legislative history or any other authority for this proposition."

Heilman pointed out that the 1951 Convention Relating to the Status of Refugees"--on which the Refugee Act is based--dealt primarily with refugees who were victims of past persecution in Europe, which had ceased with the defeat of the Axis powers.

He noted that the United States has been operating an extensive refugee program for Cambodians "whose claim to refugee status is solely based on persecution by the regime of Pol Pot, which was driven out of power in December 1978 by a Vietnamese invasion."

Refugees Entering the United States via a Third Country In another case involving an asylum applicant from outside the

Western Hemisphere, the BIA, on July 13, found that an asylum applicant who was firmly resettled in Israel was not automatically ineligible for a grant of asylum.

In Matter of Soleimani, the BIA ruled that an Iranian Jew who fled to Israel, where she stayed with family members for nearly a year, was not ineligible for asylum on account of an offer of firm resettlement in a third country.

While the law does preclude admission to the United States of refugees who have been firmly resettled in a third country and regulations bar INS district directors from granting asylum to applicants who have been firmly resettled elsewhere, the BIA found no legal or regulatory bar to an immigration judge or the BIA itself exercising its discretion to grant asylum in such cases.

The BIA noted that firm resettlement in a third country "would normally preclude a grant of asylum as a matter of discretion, unless the alien can demonstrate countervailing equities in his favor that are compelling in nature."

In Soleimani's case, the Board ruled that asylum was warranted as a matter of discretion, because "her ties to Israel... should be balanced with the remaining factors which include the facts that her ties to Israel are somewhat limited, that she came to this country by legal means and applied for asylum while in a legal status here, that there is no evidence that she engaged in fraud in order to circumvent orderly refugee procedures, and that there are no other factors adverse to the respondent in the record."

In their digest of the case, the editors of the immigration weekly, Interpreter Releases, noted that the case reinforces the notion that merely passing through a third country on the way to the United States does not by itself render an alien ineligible for asylum, even if the alien was offered permanent residence in a third country. "This would seem to apply not only to persons who stop in Israel before coming to the U.S.," said the editors, "but also to Central Americans who pass through Mexico on their way to the U.S."

BIA and Federal Courts Continue to Tangle over Central American Asylum Cases The U.S. Court of Appeals for the Ninth Circuit has again challenged the BIA's interpretation that the asylum standard rarely addresses violence arising from civil war situations. On August 24, the Ninth Circuit ruled that the BIA should not have dismissed an appeal by a Salvadoran who claimed to have fled based on a fear that either the guerrillas or the government would kill him if he returned.

The case, Maldonado Cruz v. INS, involves a Salvadoran who was kidnapped by the guerrillas in 1983 and forced to participate in a guerrilla operation against his village. A few days later, he escaped. Neighbors and family told him that the guerrillas had come to his home several times looking for him. He stated that he feared that the guerrillas would kill him for having deserted them and that the military forces of El Salvador would persecute him because of the "perceived political opinion" that he is a member of the guerrillas. Maldonado-Cruz claims political neutrality in the conflict.

In 1987, an immigration judge denied asylum. On appeal, the BIA agreed, arguing

SEGUNDO MONTES MOZO
IGNACIO MARTIN-BARO

Segundo Montes and Ignacio Martin-Baro, Jesuit priests well known in the United States for their research on Salvadoran refugees in this country, were murdered in El Salvador during the early morning hours of October 16. They were among six priests and two others killed at their home, reportedly by uniformed men.

On November 1, Montes, who co-authored Salvadoran Migration to the United States: An Exploratory Study (see Refugee Reports, Vol. IX, No. 9), had been in Washington, D.C. to receive a human rights award presented by the Central American Refugee Center (CARECEN). Sylvia Rosales, until recently executive director of CARECEN, told the Washington Post that she had spoken by phone with Montes only a few days before he was killed. When Rosales expressed concern for his safety, she says that Montes replied: "If we have to die, we have to die. That is our mission--to die for the poor."

that a threat to harm or kill a deserter from a guerrilla organization does not constitute persecution. The BIA said that such a threat "is part of a military policy of that group, inherent in the nature of the organization, and a tool of discipline; thus, the threat is neither an act of persecution nor evidence of persecution by the guerrilla organization on account of political opinion." (See Refugee Reports, Vol. IX, No. 11.)

Political Opinion Essentially, the BIA had narrowed the argument, saying that the facts of the case were not at issue, but only "whether the harm the respondent fears is on account of 'political opinion'" as the term is used in the Refugee Act. That law establishes the standard of asylum eligibility as "persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."

The Ninth Circuit found that "choosing to remain neutral is no less a political decision than choosing to affiliate with a particular political faction" and that Maldonado's refusal to join the guerrillas "was a manifestation of his neutrality, which is a recognized political opinion."

The court found that his fear of the Salvadoran military was similarly on account of political opinion. "Maldonado had been falsely accused of being associated with the guerrillas, and the El Salvador authorities threatened to kill him because of this report."

Although concurring with the majority decision, Judge Clifford J. Wallace dissented on the credibility question, citing "significant factual inconsistencies in his story." He said that the case should be remanded for a credibility determination. But the majority disagreed, saying that the "the basic facts are not in dispute," and that the immigration judge and BIA had denied asylum as a matter of law rather than a question of fact.

BIA Draws a Line around the Ninth Circuit The BIA had clearly indicated its disagreement with the Ninth Circuit on an earlier asylum case involving a claim of political neutrality, Bolanos-Hernandez v. INS. Although Maldonado-Cruz lived in California's Ninth Circuit and was apprehended there, the INS transported him to Louisiana and Texas, where he was detained and placed in deportation proceedings.

When it dismissed Maldonado-Cruz's asylum claim based on political neutrality, the BIA said, "We do not find it appropriate to apply the Ninth Circuit's decision in that case [Bolanos-Hernandez] in the Fifth Circuit, the circuit where this case arises. We know of no Fifth Circuit case which agrees with the rationale of Bolanos-Hernandez."

The Ninth Circuit was not amused. "In addition to the general policy of preventing forum shopping by the INS," said the court, "the facts of this case make it particularly appropriate to apply Ninth Circuit cases." The court noted, "Apart from the government's unilateral action in transporting him to Louisiana and Texas for deportation proceedings, Maldonado had no contacts with the Fifth Circuit."

Kate McGrath, an attorney with the Asylum Appeals Program of the San Francisco Lawyers' Committee for Urban Affairs, and a consultant on the Maldonado-Cruz case, said the decision was "a very useful victory for asylum seekers in the Ninth Circuit, and may serve as a first blow to the EOIR's restrictive view of political opinion in the context of civil war in other circuits as well." The EOIR is the Executive Office of Immigration Review, the federal agency within the Justice Department that includes immigration judges and the BIA.

BIA Grudgingly Grants Asylum to Guatemalan in Ninth Circuit A case decided on August 3, Matter of Juan, touches on the issues raised in all of the cases discussed above: 1) safe haven in a third country--in this case Mexico; 2) past persecution; 3) political neutrality as political opinion; 4) imputed political opinion in civil strife; and 4) the happenstance of whether or not a case arises in the Ninth Circuit.

In March 1982, government soldiers came to the Kanjobal Indian village of Los Molenos San Rafael in Guatemala with a list of names of people who allegedly had given corn to the guerrillas. The name of the father of Juan, a fifteen-year-old boy, was on that list. The soldiers took Juan's father from their home. The next day, his decapitated body was found.

The next evening, the guerrillas entered the same village and abducted Juan's mother. Before she was taken, she told her son to hide. The next day, she was found dead.

Juan testified that both of his parents were individually singled out and that to his knowledge no other villagers were killed on the days his father and mother were killed.

The day after his mother's murder, Juan began his journey out of Guatemala. After traveling through Mexico for a month, he entered the United States illegally in April 1982.

Juan testified that if he is returned to Guatemala he is afraid that he will be killed by either the guerrillas or government soldiers and that he "has no one or anything to return to in Guatemala."

The State Department advisory opinion said that he had failed to establish a well-founded fear of persecution in Guatemala.

The immigration judge agreed, saying that Juan had failed "to show that he would be subjected to persecution in Guatemala." The immigration judge accepted the credibility of Juan's testimony, but did not find evidence of any "systematic persecution of the respondent or his family," and was "satisfied that the respondent could have remained" in Guatemala with his aunt.

The immigration judge also said that the 15-year-old had reached a "safe haven" in Mexico before entering the United States.

Ninth Circuit Ruling Applies In sustaining Juan's appeal of his denial, the BIA was careful to note that the case arose within the jurisdiction of the Ninth Circuit and specifically noted Ninth Circuit opinions. For example, it said, "The Ninth Circuit has noted the relevance...of violence directed against an alien's family members" and that the Ninth Circuit has held that the "fact that there have been a number of threats or acts of violence against members of an alien's family is sufficient to support the conclusion that the alien's life or freedom is endangered." The BIA observed that "the Ninth Circuit has also noted that evidence of abuses committed by a government against its civilian population strengthens the significance of evidence of a specific threat to an individual respondent's life or freedom."

After cataloguing Ninth Circuit opinions on similar asylum claims, the BIA said that the determinative issue in the claim is whether Juan had adequately demonstrated that his "fear of harm" was on account of any of the five statutory grounds of race, religion, nationality, membership in a particular social group, or political opinion.

"The record does not reflect that the respondent belonged to any political group or opposition group in Guatemala," said the BIA. "Likewise, the record does not establish that the respondent affirmatively chose to remain neutral by not joining either the guerrillas or the government forces."

The BIA characterized Juan's claim as being based on "imputed political opinion" and the fact that he is a Kanjobal Indian, a group that has been subjected to widespread violence by the combatant forces.

The BIA's decision carefully limits itself to Ninth Circuit precedents. "On the record before us under controlling Ninth Circuit precedent decisions, we find a reasonable basis for the respondent's fears of governmental persecution on account of imputed political opinion arising from family ties. Accordingly, while we would not find that the respondent has demonstrated a 'clear probability' of persecution if he returns to Guatemala, we find that he has adequately demonstrated his eligibility for asylum under the less stringent requirements of the 'well-founded fear' standard."

Heilman Dissents on Question on Political Opinion Board member Michael Heilman--with a concurrence from Fred W. Vacca--dissented from the majority opinion that the father had an imputed political opinion. "The only reason to speak in terms of imputed political opinion," he said, "is to 'pigeon-hole' the case within one of the five categories set forth in the law for asylum."

"It seems a bit absurd," said Heilman, "in these circumstances to try to divine some 'imputation' of opinion, as if the individual's political views would save or condemn him. If the respondent's father had not been taken, it is more than likely that someone else would have sufficed." He said that the government was more interested in "making examples and in intimidating the population" than in persecuting anyone for their opinion.

Heilman said that an imputed political

opinion on the part of the mother was even less likely. Heilman included in his dissent imaginary conversations that he thought both the father and mother might have had with their murderers.

Heilman said that he "envision[s] her telling the guerrillas that she did not want to give them the money because she was afraid the government would find out about it and kill her, or that she was too poor to aid them because her husband had been killed by the soldiers."

But, wrote Heilman, "It is very probable that they [the guerrillas] listened to some such explanation and then killed her anyway, because it was in their interest to up the ante, so to speak."

Heilman concluded, "To search for 'political opinion,' 'imputed' or actual, in these circumstances seems a useless and perhaps ultimately fallacious approach."

Heilman said that the hidden agenda of the Ninth Circuit is to rest asylum determination on the possibility of summary, extra-legal harm being inflicted, rather than on a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. He cited several Ninth Circuit decisions involving Salvadorans and Guatemalans, which he said used this reasoning, and called it a "ludicrous" approach.

"If the claimed agent of persecution is actually indifferent to any person's opinion, and inflicts harm more as a matter of habit or policy, or just because of viciousness, then it does the victim little good to engage in completely theoretical discussions of 'imputation' of political opinion," he said.

Carol L. Wolchok, who argued Juan's case before the BIA on behalf of the American Civil Liberties Union, said that it was Heilman himself who was engaging in unwarranted speculation about the motives of persecutors.

"I am disappointed," she said, "that Mr. Heilman would look at a case, such as Juan's, where asylum could be granted on any number of grounds, including past persecution for having been orphaned at the age of 14 by the political murder of both parents, and speculate about other reasons to deny asylum."

Wolchok said, "The Ninth Circuit is teaching the BIA to look at asylum claims with a new eye. I look forward to the day when the BIA and the other circuits will share the Ninth Circuit's approach."

Resources

WHY SOMALIS FLEE

Robert Gersony, whose report for the U.S. State Department on the role of the Mozambican National Resistance (RENAMO) in the Mozambican conflict led to international condemnation of that group's actions towards civilians, has written a valuable new report on Somali refugees and displaced people and their experiences in the conflict in northern Somalia. The report, Why Somalis Flee, which was also written for the State Department, is based on Gersony's interviews with more than 300 Somali refugees and internally displaced people, as well as with government and international personnel in Somalia and Ethiopia.

According to the report, "The Somali Armed Forces appears to have engaged in a widespread, systematic, and extremely violent assault on the unarmed civilian Issak population of northern Somalia." The report adds that Ethiopian refugees who were living in refugee camps in northern Somalia were "routinely and forcibly conscripted" by the Somali government and that many were induced to participate in the conflict.

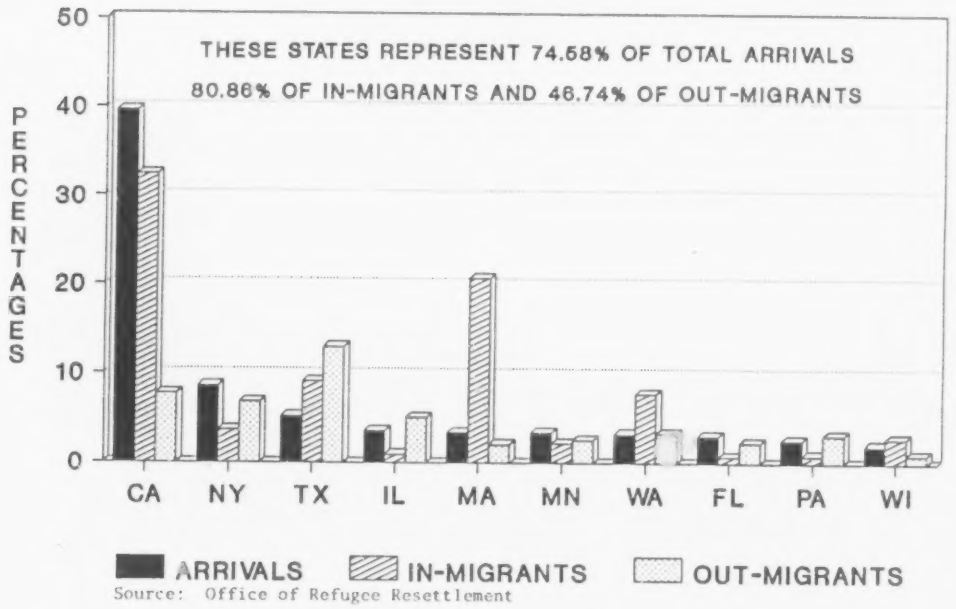
Copies of this report, which could prove particularly useful to lawyers representing Somali asylum seekers, are available free of charge from the Bureau for Refugee Programs, RP/PA, Room 1282 SA-1, Department of State, Washington, DC 20520. (202) 663-1026.

NEW USCR ISSUE PAPER ON SOUTHERN AFRICA

In December, Refugee Reports subscribers will receive a new U.S. Committee for Refugees Issue Paper. Peace or Terror: A Crossroads for southern Africa's Uprooted is based on a USCR site visit to the region. For bulk orders, please contact Carolyn Moore at USCR (202) 347-3507.

REFUGEE ARRIVALS AND SECONDARY MIGRATION
TEN MAJOR ARRIVAL STATES - % OF TOTALS

FFY 1986 TO 1988



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REFUGEE REPORTS is published monthly for $35.00 per year for one subscription, $25.00 each for two or more subscriptions to the same addressee, or $25.00 each for ten or more subscriptions requested at the same time, mailed to separate addresses; overseas postage is an additional $24.00 for second class or an additional $75.00 for airmail; by ACNS, 95 Madison Avenue, Third Floor, New York, NY 10016. Second Class Postage paid at New York and additional mailing offices. POSTMASTER: send address changes to *Refugee Reports*, Sunbelt Fulfillment Services, P.O. Box 41094, Nashville, TN 37204.

Editorial comments and inquiries should be sent to: *Refugee Reports*, 1025 Vermont Avenue NW, Suite 920, Washington, DC 20005. All communications regarding subscriptions should be sent to: *Refugee Reports* Subscriptions, Sunbelt Fulfillment Services, P.O. Box 41094, Nashville, TN 37204. (615) 377-3322.

Basic subscription rate for 12 issues per year: $35.00; Multiple-copy rate: $25.00; Single copies of back issues: $3.00
Editor: Virginia Hamilton; Staff Writers: Bill Frelick, Court Robinson, and Hiram A. Ruiz
Distribution Manager: Carolyn Moore; Production Coordinator: Koula Papanicolas
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Refugee Reports

A News Service of the U.S. Committee for Refugees, a Project of the American Council for Nationalities Service
Sunbelt Fulfillment Services
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Nashville, TN 37204

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